

§5604. Protection

The Legislature finds and declares that the rights of persons with intellectual disabilities, autism or acquired brain injuries can be protected best under a system of services that operates according to the principles of normalization and full inclusion and that the State's system of services must operate according to these principles with the goals of: [PL 2021, c. 284, Pt. A, §7 (AMD).]

1. Community-based services. Continuing the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the person receiving services; [PL 2007, c. 356, §23 (AMD); PL 2007, c. 356, §31 (AFF).]

2. Independence and productivity. Providing habilitation, education and other training to persons with intellectual disabilities or autism that will maximize each person's potential to lead an independent and productive life and that will afford opportunities for full inclusion into the community where each person lives; and [PL 2011, c. 542, Pt. A, §127 (AMD).]

3. Grievance right. Providing a person with an intellectual disability, autism or an acquired brain injury with the right to appeal a decision regarding actions or inactions by the department that affects the person's life. The department shall establish in rule a process for hearing such grievances pursuant to Title 22-A, section 206, subsection 4. The rules must contain strict time frames for the resolution of grievances. The rules may provide for resolution of grievances through mediation.

A. The department shall provide easily accessible and regular notice of the grievance process to persons with intellectual disabilities, autism or acquired brain injuries served by the department. This notice must be included in informational materials provided to such persons, as well as to guardians, families, correspondents and allies. Notice of the right to appeal must be prominently displayed in regional offices and on the department's publicly accessible website and must be readily available from provider agencies. Notice of the right to appeal must be included in all substantive correspondence regarding personal planning. Written notice of the right to appeal must also be provided when there is a denial or reduction of services or supports to persons served by the department. All notices and information regarding the grievance process must be written in language that is plain and understandable and must include the address and telephone number of the protection and advocacy agency designated pursuant to Title 5, section 19502. [PL 2021, c. 284, Pt. A, §8 (AMD).]

B. The department must make available a one-page form that enables a person with an intellectual disability, autism or an acquired brain injury to file a grievance. A grievance may also be filed through an oral request. If a grievance is filed through an oral request, the person receiving the grievance shall reduce the grievance to writing using a one-page form made available by the department. [PL 2021, c. 284, Pt. A, §8 (AMD).]

C. The department shall offer regular training in the grievance process for persons served by the department, their families, guardians and allies and department and service provider staff. [PL 2007, c. 356, §23 (NEW); PL 2007, c. 356, §31 (AFF).]

D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure unless final decision-making authority has been reserved by the commissioner. If the commissioner makes the final decision and modifies or rejects the hearing officer's recommended decision, the commissioner must state in writing the basis for the commissioner's decision. When the commissioner rejects or modifies a hearing officer's factual findings or makes additional factual findings, the commissioner shall articulate the evidentiary basis for such rejection or modification with appropriate references to the record. The commissioner shall give substantial deference to a hearing officer's determinations on

matters of credibility relating to testimony that was heard by the hearing officer, and when rejecting or modifying such determinations of credibility, the commissioner shall state with particularity the reasons with appropriate references to evidence in the record. In the event the commissioner fails to issue a written final decision within 30 days of the date of the recommended decision, the recommended decision of the hearing officer is deemed the final decision of the commissioner. [PL 2007, c. 356, §23 (NEW); PL 2007, c. 356, §31 (AFF).]

[PL 2021, c. 284, Pt. A, §8 (AMD).]

4. Rules.

[PL 2011, c. 186, Pt. A, §16 (RP).]

The rights and basic protections of a person with an intellectual disability, autism or an acquired brain injury under section 5605 may not be restricted or waived by that person's guardian, except as permitted by rules adopted pursuant to this section. [PL 2021, c. 284, Pt. A, §9 (AMD).]

The department has authority to adopt rules to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §17 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1993, c. 326, §8 (AMD). PL 2007, c. 356, §23 (AMD). PL 2007, c. 356, §31 (AFF). RR 2009, c. 1, §23 (COR). PL 2011, c. 186, Pt. A, §§15-17 (AMD). PL 2011, c. 542, Pt. A, §127 (AMD). PL 2011, c. 657, Pt. EE, §7 (AMD). PL 2021, c. 284, Pt. A, §§7-9 (AMD).

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